



Aeronautical Repair Station Association

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Docket Management System
Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Docket No. FAA-2003-15602, Proposed Rule: False and Misleading Statements Regarding Aircraft Products, Parts and Materials

Dear Ladies and Gentlemen:

The Aeronautical Repair Station Association (ARSA) is pleased to present its comments on the above rulemaking proposal. ARSA represents entities certificated under Part 145 of the Federal Aviation Regulations (FAR) and under similar regulations issued by National Aviation Authorities (NAA) around the world. The Association's membership includes entities that distribute parts to international civil aviation businesses, as well as air carriers and manufacturers. These entities would be directly impacted by the proposed rules.

ARSA supports the FAA's objective of ensuring that entities preparing records representing the airworthiness or acceptability of articles for installation on type-certificated products should accurately represent the status of those articles. ARSA recognizes that these proposals would impose similar regulatory prohibitions on non-certificated entities that today are subject only to non-regulatory civil and criminal laws for similar conduct.

However, as the FAA noted, existing regulations already cover maintenance providers, design approval holders and production approval holders by prohibiting intentionally false and fraudulent entries in records prepared under sections 21.2 and 43.12 of the FAR. For this reason and those described more fully below, the proposed Part 3 should not apply to certificated entities when they prepare records relating to work performed under their certificates.

In addition, ARSA has three significant concerns about these proposals. First, the Association opposes expanding the regulations to include "misleading statements" because of the highly subjective nature of the proposed standard. Second, even if the proposals are adopted, they require further clarification to ensure that maintenance providers are not subject to additional recordkeeping requirements when they prepare Part 43 records. Third, the FAA has not adequately addressed several additional categories of parts that are not required to be produced under a production approval yet

are otherwise eligible for installation on type-certificated products. The following comments apply to the paragraphs indicated.

Paragraph 3.5(c): The FAA has proposed to extend the intentional falsification and fraud requirements of sections 21.2 and 43.12 to non-certificated entities such as distributors and brokers. Therefore, these prohibitions would also apply to various commercial records (such as packing slips, certifications, shippers, invoices and similar documents) that are widely used and relied upon in the industry.

By its terms, the proposal would not apply to records prepared under Part 43. However, it would apply to the above commercial records prepared by a certificated repair station to accompany an article that the repair station has maintained or altered, or is simply selling as a distributor.

As mentioned in the preamble, the prohibitions against intentional falsification and fraud are well understood and followed in the aviation maintenance industry. Although ARSA does not believe that repair stations should be subject to additional and duplicative rules, the Association does not oppose proposed paragraph 3.5(c) because it would only apply to certificated entities when they perform a function that was not regulated under their certificate.

Paragraph 3.5(d): The Association is very troubled by proposed paragraph (d) dealing with preventing misleading statements. Unlike the well-defined regulatory offenses of intentional falsification and fraud, an evaluation of whether a statement is misleading injects a far greater degree of subjectivity into the determination. As the FAA pointed out in the preamble, the offenses of intentional falsification and fraud focus on whether the alleged violator had actual knowledge of the falsity or intended to deceive. However, under proposed paragraph 3.5(d), the inquiry would depend on whether a reasonable consumer was likely to be misled by a statement in a particular record. The Association is concerned that the subjective nature of this proposal could result in an ambiguous and poorly defined legal standard. For this reason, ARSA recommends that proposed paragraph 3.5(d) be withdrawn and the regulations limited to prohibit only that conduct which is intentionally false or fraudulent.

Paragraph 3.5(e): The Association believes that proposed section 3.5(e) should be clarified. This paragraph applies to persons that represent that a product, part or material "meets airworthiness standards." It requires that they ensure that the part was either produced under an FAA production approval, is a standard part or otherwise affirmatively state in the record that it was not produced under such approval. Unlike proposed paragraph 3.5(c), this section could be read to apply to records made under Part 43.

The performance rules in Parts 43 and 145 and the required certification governing the approval for return to service following maintenance, preventive, rebuilding and alterations have always applied the concept of "airworthiness" to the specific work being accomplished. For this reason, the Association does not believe that the FAA intended for maintenance providers to determine whether a part is approved under Part 21 or is a standard part when preparing a Part 43 maintenance record. Indeed, the term "meets airworthiness standards," in this paragraph suggests that the agency was intending to reach only those who represented that a product, part or material was "airworthy" rather than "airworthy with respect to the work performed." In the preamble, the FAA stated that:

Statements that a product, part, or material is produced under a production approval essentially is a statement that it meets FAA airworthiness standards. (emphasis added)
(68 FR 23812, May 5, 2003)

The Association agrees with the above statement and believes it reflects the FAA's intent not to apply proposed paragraph 3.5(e) in the maintenance setting. In addition, the FAA did not include the statement that appears in paragraph 3.5(d) regarding acceptability for installation, thus suggesting that paragraph 3.5(e) was not intended to apply to maintenance providers. However, paragraph 3.5(e) did not exclude records prepared under Part 43 as did paragraph 3.5(c) dealing with intentionally false or fraudulent records. Therefore, the Association urges the FAA to clarify this issue.

Along these same lines, the FAA should exclude from proposed section 3.5(e) parts that are fabricated under Part 43 for the purpose of performing maintenance and alteration and owner-operator produced parts under 21.303(b)(2). These parts do not require FAA production approvals yet are eligible for installation on type-certificated products. However, if paragraph 3.5(e) were applied to them, an explicit statement that the parts were not produced under a production approval would be required. Since the records associated with parts fabricated under Part 43 are part of the section 43.9 maintenance records for the entire article, there is no reason to require a separate statement that the fabricated parts were not produced under a production approval.

A similar problem arises in the context of new replacement parts imported into the U.S. from a foreign country for installation on a type-certificated product of U.S. registry. Typically, such parts are imported into the U.S. under the terms of bilateral agreements pursuant to sections 21.500 and 21.502 of the FAR. Although they must conform to an FAA-approved design, they are not required to have a production approval. As currently drafted, the proposal would require these parts to be accompanied by a statement that they were not produced under an FAA production approval, unnecessarily raising questions about their integrity.

For the foregoing reasons, ARSA recommends that the FAA clarify that paragraph 3.5(e) does not apply to records prepared under Part 43. (This would also exclude parts fabricated under Part 43 that may not be sold separately from the repair or alteration being performed.) In addition, ARSA recommends that the FAA clarify that proposed paragraph 3.5(e) does not apply to owner produced parts or to parts imported into the United States under Part 21, Subpart N.

In summary, ARSA believes that existing regulations are adequate to cover maintenance providers when they perform work under their certificate. To the extent that the FAA desires to expand the scope of existing rules to cover commercial records typically used by distributors and brokers (but also used by certificated entities), they should be limited to those prohibiting intentional falsification and fraud.

ARSA appreciates the opportunity to file these comments. Please contact the undersigned if you have any questions or desire additional information.

Sincerely,

A handwritten signature in cursive script, reading "Marshall S. Filler". The signature is written in dark ink and is positioned above the printed name and title.

Marshall S. Filler
General Counsel